

## **MEETING MINUTES, BOARD OF ZONING APPEALS, MAY 14, 2007**

**Present:** Phil Tinkle, Mike Campbell, Shan Rutherford, Ken Knartzer, Raynel Berry, Asst. City Attorney, William Peeples, Senior Planner; and Janice Nix, Recording Secretary

The meeting was called to order at 6:00 p.m. by Phil Tinkle, Chairman.

### **PREVIOUS MINUTES**

April 23<sup>rd</sup> – Knartzer moved to approve the minutes as mailed, seconded by Campbell. Vote for **approval** was unanimous, 4-0. **Motion carried.**

It was noted that an amendment needed to be made to the agenda for tonight's meeting regarding the docket # listed for the findings of fact that are to be adopted. It is listed as V2007-005 and it should be V2007-007. Rutherford moved to amend the agenda reflecting that correction, seconded by Knartzer. Vote for **approval** was unanimous, 4-0. **Motion carried.**

### **FINDINGS OF FACT**

#### **Docket V2007-007 – Dimensional Variance** – Allen Pointe

Rutherford moved that in consideration of the statutory criteria that the Board adopt the written Findings of Fact, incorporating the evidence submitted into the record, as our final decision and final action for Variance Petition Number V2007-007, seconded by Campbell. Vote for **approval** was unanimous, 4-0. **Motion carried.**

### **NEW BUSINESS**

**Docket V2007-008 – Use Variance** – 655 Brewer Place – request to allow a beauty shop as a home occupation in a R-2 Residential zone – Tina Kern, applicant; Steve Young, owner.

Tina Kern, applicant, and several members of the audience were sworn. Ms. Kern stated she is seeking a variance to allow her to operate a beauty shop in her home.

Petitioner addressed the statutory criteria as follows:

1. **Criteria:** The approval will not be injurious to the public health, safety, morals, and general welfare of the community. **Answer:** The majority of the petitioner's customers are friends and family members. Only 25% would be new clients or referrals. The request would be conducted completely within an existing, well-maintained single-family dwelling and operated within the bounds of a permitted home occupation. The petitioner conducts her business in accordance with the requirements of the State Statute and with appropriate licensing.
2. **Criteria:** The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner. **Answer:** There will be no need for any structural change that would cause a negative impact on the neighborhood or any of the surrounding properties. Petitioner works part-time on an appointment-only basis. Petitioner does not work weekends, accepts no walk-ins and needs no signage. There will be no exterior evidence of the conduct of this business at this location and the traffic generation will be little more than typical for a single-family residence. There should be no impact on the area adjacent to the property included in the variance in a substantially adverse manner. Additionally, the primary use of the property will remain residential with a part-time, concurrent use for a beauty shop operated as a home occupation.

3. **Criteria:** The need for the Variance arises from some condition peculiar to the property involved. **Answer:** Subject property is currently zoned residential. The Zoning Ordinance specifically prohibits this use as a home occupation, since the tendency of this use to expand beyond the confines of a home occupation; however, the petitioner intends to operate this use within the bounds of a home occupation and has operated a similar use out of a home under a previous use variance without complaint.
4. **Criteria:** The strict application of the terms of the Zoning Ordinance will constitute an unnecessary and unusual hardship if applied to the property for which the variance is sought. **Answer:** The use would not require structural changes to the dwelling that would render it unsuitable for residential habitation, nor be operated outside the bounds of a typical home occupation. The petitioner has proper training and licensing to conduct this occupation, and the denial of this variance would result in the inability to conduct her livelihood with an acceptable level of flexibility.
5. **Criteria:** The approval does not interfere substantially with the Comprehensive Plan. **Answer:** The Comprehensive Plan envisions residential uses which would remain the primary use of the property. The concurrent use of the property as a home occupation will not detract from the long-range use of the property for residential purposes.

Remonstrators then came forward. John Gibson, 201 Elm St., Grwd, 46142, spoke first. He presented a petition that has been signed by 20 homeowners in the area. He also presented a copy of an advertisement in the yellow pages, as well as an ad that was placed in the Daily Journal. It is his understanding that in accordance with the home occupation section of the ordinance advertising of this type is not allowed. Kelly Crawford, 604 Brewer Place, Grwd, came forward. She is concerned about home values and hours of operation. William Breuninger, 413 Brewer Place, Grwd, came forward next. He is opposed to the granting of the variance. Sylvia White, 617 Brewer Place, Grwd came forward. She lives next door to the subject property. She stated she feels Ms. Kern has been a good neighbor and she has no objection to the granting of the variance. Marsha Coley, 609 Brewer, Grwd, came forward. She inquired why the business was transferred to her street from the original location on N. Meridian St. Roger Carson, 104 S. Fairview Dr., Grwd, came forward. He is opposed to the variance.

Senior Planner Bill Peebles read into the record a letter of remonstrance from Robert and Bridget Lessard.

Tina Kern came forward for rebuttal. She stated the phone directory ad was free and has been listed for a number of years. In regard to the advertisement in the Daily Journal, when she realized she was in violation she applied for the variance immediately. She will change both ads and remove the address to comply with the ordinance. Her hours of operation vary; however, she stated she works by appointment only. She does not take walk-in customers.

Chairman Tinkle addressed some of the remonstrator's questions. Concerning the variance that was previously granted for Ms. Kern at 414 N. Meridian St., that variance was for that property only. A use variance does not apply to a new location. It is not required that you be the property owner to have a variance granted to you. A consent of property owner was submitted into evidence and made part of the file.

Tinkle then reviewed the 12 conditions pertaining to home occupations that are listed in the Zoning Ordinance. Ms. Kern responded to each as it was read:

1. Such occupation shall be conducted solely by resident occupants within their own dwelling. Non-resident employees are expressly prohibited. Response: There will be no other employees.

2. No more than one room or 25% of the gross floor area of the dwelling, whichever is less, shall be used for such purpose. Use of accessory buildings or detached garages for these purposes is prohibited. Response: Pat Chaney came forward and was sworn. She stated she is a customer of Ms. Kerns. The area that Ms. Kern uses for her business is approximately 8' x 8'. It is located in the attached garage. Customers enter through the front door.
3. No use shall require internal or external alterations or involve construction features or the use of electrical or mechanical equipment features or the use of mechanical equipment that would change the fire rating of the structure or the fire district in which the structure is located. Response: There will be no alterations.
4. No home occupants shall cause an increase in the use of any one or more utilities (water, sewer, electricity, gas, garbage, etc.) so that the combined total use for dwelling and home occupation purposes exceeds the average for residences in the neighborhood. Response: There will be no significant increase. There is one shampoo chair and one style chair.
5. There shall be no outside storage of any kind related to the home occupation. Generally speaking, with a nameplate as permitted herein excluded, a home occupation shall be "invisible" from outside the dwelling. Response: There will be no outside visible signs of business being conducted.
6. Only one nameplate shall be allowed. It may display the name of the occupant and/or the name of the home occupation. It shall not exceed one square foot in area, shall be non-illuminated, and attached flat to the main structure or visible through a window. The limitation to one nameplate is extended to apply to all lots, including corner lots. Response: Senior Planner Bill Peeples pointed out that one of the proposed conditions for approval is that no signs be allowed since Ms. Kerns works on an appointment-only basis. Kern agrees that no sign or nameplate will be used.
7. The home occupation use may increase vehicular traffic flow and parking by no more than one vehicle at a time. Off-street parking shall be provided without encroaching upon required front-yard open space or setback requirements. Response: Peeples stated that he also proposes a condition in his staff report limiting the number of customers not to exceed 2 at one time, thereby alleviating the need for off-street parking. Kern is in agreement with that.
8. No use shall create noise, dust, vibration, smell, smoke, glare, electrical interference, fire hazard, or any other hazard or nuisance to any greater or more frequent extent than that usually experienced in an average residential occupancy in the district in question under normal circumstances wherein no home occupation exists. Response: Kern is in agreement with this.
9. It shall not involve the use of commercial vehicles for delivery of materials to or from the premises other than vehicles normally associated with residential home delivery (i.e., postal or united parcel vehicles). Response: It will not.
10. The home occupation shall not involve the use of advertising signs or any other local advertising media which calls attention to the fact that the dwelling is being used for business purposes, telephone number excluded. Response: It was noted that advertisements/phone listings are allowed as long as only the name of the business and a phone number are listed. The address cannot be listed. Kern is in agreement with that.
11. In no way shall the appearance of the structure be altered or the occupation within the residence be conducted in a manner which would cause the premises to differ from its residential character either by use of colors, materials, construction, lighting, signs, or other means. Response: Kern is in agreement with that.
12. No stock in trade (except for articles produced on the premises by residents of the dwelling) shall be displayed or sold upon the premises. Not more than 10 cubic feet of space within the dwelling may be utilized for storage of materials and supplies related to the home occupation. Response: Kern is in agreement with that.

Knartzer inquired why the business was moved from its original location. Kern replied that she had moved to a smaller dwelling in order to downsize. The remonstrators had expressed concern about the granting of this variance setting a precedent for others to obtain variances in the area. Tinkle pointed out that each variance request would have to meet the established criteria. There was also concern by neighbors that the business will grow. Kern replied that she has been doing this for 20 years and it has not grown to more than what it is now. Kern does not have a license for a barber shop, only beauty shop.

Knartzer stated he feels the criteria is being met from what he has heard here this evening.

Campbell inquired what recourse City has if conditions of the variance not met. Peeple replied that there would be enforcement action by Planning Dept.

Rutherford moved that we admit into the record all evidence presented in regard to this matter, including the notices, receipts, maps, photographs, written documents, Petitioner's application and attachments, Petitioner's Detailed Statement of Reasons, the Staff Report prepared by the Planning Department, certified copies of the Zoning Ordinance and Comprehensive Plan, testimony of the Petitioner, City planning staff and any evidence and testimony presented by Remonstrators, and all other exhibits presented, be they oral or written, for consideration by this Board in regard to this petition, seconded by Knartzer. Vote for **approval** was unanimous, 4-0. **Motion carried.**

Knartzer moved that based on the evidence presented that the Board approve the granting of a use variance to allow a beauty salon as a home occupation located at 655 Brewer Place, in that the approval

- A. Will not be injurious to the public health, safety, morals and general welfare of the community, per the reasons cited by the Staff Report;
- B. The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner, per the reasons cited by the Staff Report;
- C. The need for the Variance does arise from some condition peculiar to the property involved, per the reasons cited by the Staff Report;
- D. The strict application of the terms of the zoning ordinance will result in practical difficulties in the use of the property, per the reasons cited in the Staff Report.
- E. The approval does not interfere substantially with the Comprehensive Plan, per the reasons cited by the Staff Report.

With the following conditions:

- 1) The use shall comply with the 12 stipulations of a home occupation contained within the Zoning Ordinance of Greenwood, Indiana, except as modified below.
- 2) There shall be no more than 2 customers on the site at any one time.
- 3) There shall be no sign, nameplate or other exterior evidence of the home occupation permitted.
- 4) There shall be no part-time employees.
- 5) Area to be used for business will be no larger than current 8' x 8' area.

Seconded by Rutherford. Vote for **approval** was unanimous, 4-0. **Motion carried.**

Campbell moved that having considered the statutory criteria that we direct the City Attorney's Office to draft written Findings of Fact, regarding our decision approving Variance Petition Number V2007-008, said Findings to specifically incorporate the staff report and the evidence submitted into the record, for consideration and adoption by the Board of Zoning Appeals as our final decision and final action regarding this Petition at our next meeting, seconded by Knartzer. Vote for **approval** was unanimous, 4-0. **Motion carried.**

**Docket V2007-09 – Dimensional (Sign Code) Variance** – Northern Park Baptist Church – 598 N. Meridian St. – request to allow a ground sign with a height of 8’ – Northern Park Baptist Church, applicant.

Staff requested a waiver from the Board of the 15 days notice requirement for the Southside Challenger legal ad and to accept 10 days notice as sufficient. Notice was posted in the paper 10 days prior to the hearing, which complies with state statute, but lacking the 15 days notice required by our ordinance. Knartzer moved to grant waiver, seconded by Rutherford. Vote for **approval** was unanimous, 4-0. **Motion carried.**

Pastor Allen Pierce came forward and was sworn, as well as members of the audience. The proposed sign is a 5’ sign with a 3’ tall base.

Pastor Pierce responded to the criteria as follows:

1. **Criteria:** The approval will not be injurious to the public health, safety, morals, and general welfare of the community; **Answer:** The request seeks to establish an 8-foot sign approximately 30’ from the right-of-way of Meridian Street, which should provide for at least two vehicle stacking spaces in front of the sign to view oncoming traffic.
2. **Criteria:** The use and value of the area adjacent to the property included in the Variance will not be affected in a substantially adverse manner. **Answer:** The sign would be constructed of materials consistent with the front façade of the existing building and be consistent with several other ground signs in the vicinity of the church which advertise other commercial and multi-family residential projects in the vicinity of the request.
3. **Criteria:** The strict application of the terms of the Zoning Ordinance will result in practical difficulties in the use of the property. **Answer:** The purpose of the height restriction on ground signs is to ensure that the sign does not obstruct traffic maneuvers to a degree that would cause a public safety hazard. The petitioner has proposed a larger than normal setback from the right-of-way to ensure that this intent is achieved by other means.
4. **Criteria:** The proposed structure is not regulated under Indiana Code 8-21-10 because **Answer:** While the property is within the Airspace Overlay District, the proposed new structure would be 8 feet in height and the property is located 5,162 feet from the nearest point of the runway of the Greenwood Municipal Airport (the runway of which is 4,901 feet in length according to the FAA Form 5010-1) which would require a structure exceeding 51.62 feet in height to be regulated under that section of Indiana Code.

The floor was then opened for anyone else to speak for or against this variance request. John Gibson, 201 Elm St., Grwd, came forward. He inquired about correct dimensions of the sign. The sign area will be 5’ tall by 8’ wide. The base of the sign will be 3’ tall. Joe Ebeyer came forward. He lives in the condominium located directly adjacent to this property. He spoke in favor of the sign. He commended the church for their upkeep of their property.

Knartzer asked Pastor Pierce to address criteria #3 in more detail. Pierce responded that when he originally read through the Sign Code he thought the 4’ height restriction did not apply to them because they are commercial zoned. The sign had been ordered prior to him realizing that indeed the 4’ height restriction did apply to their property. The church has been using a temporary sign; however, a more stable permanent sign is needed.

Tinkle inquired if the sign will be lighted. Pastor Pierce replied that it will be internally lit.

Rutherford moved that we admit into the record all evidence presented in regard to this matter, including the notices, receipts, maps, photographs, written documents, Petitioner’s application and attachments, Petitioner’s Detailed Statement of Reasons, the Staff Report prepared by the Planning

Department, certified copies of the Zoning Ordinance and Comprehensive Plan, testimony of the Petitioner, City planning staff and any Remonstrators, and all other exhibits presented, be they oral or written, for consideration by this Board in regard to this petition, seconded by Campbell. Vote for **approval** was unanimous, 4-0. **Motion carried.**

Campbell moved that based on the evidence presented that the Board approve the granting of a dimensional variance to allow a ground sign with an overall height of 8' located at Northern Park Baptist Church, 598 N. Meridian St., Greenwood, IN 46143, in that the approval

- A. Will not be injurious to the public health, safety, morals and general welfare of the community, per the reasons cited by the Staff Report;
- B. The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner, per the reasons cited by the Staff Report;
- C. The strict application of the terms of the zoning ordinance will result in practical difficulties in the use of the property, per the reasons cited in the Staff Report;
- D. The proposed structure is not regulated under Indiana Code 8-21-10 because while the property is within the Airspace Overlay District, the proposed new structure would be 8 feet in height and the property is located 5,162 feet from the nearest point of the runway of the Greenwood Municipal Airport (the runway of which is 4,901 feet in length according to the FAA Form 5010-1) which would require a structure exceeding 51.62 feet in height to be regulated under that section of Indiana Code.

Seconded by Knartzer. Vote for **approval** was unanimous, 4-0. **Motion carried.**

Knartzer moved that having considered the statutory criteria that we direct the City Attorney's Office to draft written Findings of Fact, regarding our decision approving Variance Petition Number V2007-009, said Findings to specifically incorporate the staff report and the evidence submitted into the record, for consideration and adoption by the Board of Zoning Appeals as our final decision and final action regarding this Petition at our next meeting, seconded by Rutherford. Vote for **approval** was unanimous, 4-0. **Motion carried.**

**Docket V2007-010 – Dimensional (Sign Code) Variance** – Endress + Hauser – 2330 Endress Place – request to 2 sign code variances (1 to allow 159 sq. ft. sign on the west side of the building; and 2) to allow a 159 sq. ft. sign on the east side of the building – Endress + Hauser, applicant.

Mark Snodgrass, Endress + Hauser, came forward and was sworn. The variance request is to allow 2 additional wall signs, on the west and east sides of the building, each measuring 159 sq. ft.

1. **Criteria:** The approval will not be injurious to the public health, safety, morals, and general welfare of the community; **Answer:** The signs will not be injurious to the public health, safety, morals and general welfare of the community. The signs will be located approximately 1,000 feet from public roads.
2. **Criteria:** The use and value of the area adjacent to the property included in the Variance will not be affected in a substantially adverse manner. **Answer:** The property adjacent to the site is largely undeveloped and the signs would be professionally constructed and be consistent with both the scale and architectural style of the existing building. The signs will be professionally done and aesthetically pleasing.
3. **Criteria:** The strict application of the terms of the Zoning Ordinance will result in practical difficulties in the use of the property. **Answer:** Due to the extremely large setback of the building, the variance will allow for better visibility that we need for our customers, sales representatives, vendors and delivery trucks to find our facility.
4. **Criteria:** The proposed structure is not regulated under Indiana Code 8-21-10-3 because **Answer:** The proposed signage would be located on an existing building and would not result in an increase in the height of the structure. Additionally, the property is

located 13,700 feet from the nearest point of the runway of the Greenwood Municipal Airport (the runway of which is 4,901 feet in length according to the FAA Form 5010-1) which would require a structure exceeding 137 feet in height to be regulated under that section of the Indiana Code.

Rutherford moved that we admit into the record all evidence presented in regard to this matter, including the notices, receipts, maps, photographs, written documents, Petitioner's application and attachments, Petitioner's Detailed Statement of Reasons, the Staff Report prepared by the Planning Department, certified copies of the Zoning Ordinance and Comprehensive Plan, testimony of the Petitioner, City planning staff and any Remonstrators, and all other exhibits presented, be they oral or written, for consideration by this Board in regard to this petition, seconded by Knartzer. Vote for **approval** was unanimous, 4-0. **Motion carried.**

Knartzer moved that based on the evidence presented that the Board approve the granting of a dimensional variance to allow a 159 sq. ft. wall sign on the west elevation of the building located at Endress + Hauser, 2330 Endress Place, Greenwood, IN 46143, in that the approval

- A. Will not be injurious to the public health, safety, morals and general welfare of the community, per the reasons cited by the Staff Report;
- B. The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner, per the reasons cited by the Staff Report;
- C. The strict application of the terms of the zoning ordinance will result in practical difficulties in the use of the property, per the reasons cited in the Staff Report.
- D. The proposed structure is not regulated under Indiana Code 8-21-10-3 because the proposed signage would be located on an existing building and would not result in an increase in the height of the structure. Additionally, the property is located 13,700 feet from the nearest point of the runway of the Greenwood Municipal Airport (the runway of which is 4,901 feet in length according to the FAA Form 5010-1) which would require a structure exceeding 137 feet in height to be regulated under that section of the Indiana Code.

Seconded by Campbell. Vote for **approval** was unanimous, 4-0. **Motion carried.**

Knartzer moved that based on the evidence presented that the Board approve the granting of a dimensional variance to allow a 159 sq. ft. wall sign on the east elevation of the building located at Endress + Hauser, 2330 Endress Place, Greenwood, IN 46143, in that the approval

- A. Will not be injurious to the public health, safety, morals and general welfare of the community, per the reasons cited by the Staff Report;
- B. The use and value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner, per the reasons cited by the Staff Report;
- C. The strict application of the terms of the zoning ordinance will result in practical difficulties in the use of the property, per the reasons cited in the Staff Report.
- D. The proposed structure is not regulated under Indiana Code 8-21-10-3 because the proposed signage would be located on an existing building and would not result in an increase in the height of the structure. Additionally, the property is located 13,700 feet from the nearest point of the runway of the Greenwood Municipal Airport (the runway of which is 4,901 feet in length according to the FAA Form 5010-1) which would require a structure exceeding 137 feet in height to be regulated under that section of Indiana Code.

Seconded by Campbell. Vote for **approval** was unanimous, 4-0. **Motion carried.**

Rutherford moved that having considered the statutory criteria that we direct the City Attorney's Office to draft written Findings of Fact, regarding our decision(s) approving signs on both the east and west sides of the building, Variance Petition Number V2007-010, said Findings to specifically incorporate the staff report and the evidence submitted into the record, for consideration and adoption

by the Board of Zoning Appeals as our final decision and final action regarding this Petition at our next meeting, seconded by Knartzer. Vote for **approval** was unanimous, 4-0. **Motion carried.**

**Docket V2007-011 – Dimensional Variance** – Greenwood Self Storage – Emerson Ave. & South Park Blvd. – request variance from I-65 Overlay requirements to allow less than 75% masonry on exterior walls – Turtle Creek Management, LLC, applicant.

There is a request from staff to continue V2007-011 to July 9, 2007, due to the fact that the petitioner needs to obtain FAA approvals in compliance with state statute. Knartzer moved to continue V2007-011 to July 9, 2007, seconded by Rutherford. Vote for **approval** for the **continuance** was unanimous, 4-0. **Motion carried.**

#### **ANNOUNCEMENTS/REPORTS**

Knartzer moved to adjourn, seconded by Campbell. Vote for **approval** was unanimous, 4-0. **Motion carried.** Meeting was adjourned at 7:15 p.m.

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JANICE NIX  
Recording Secretary

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PHIL TINKLE  
Chairman